

**MINUTES OF THE GOVERNING BOARD  
OF THE ANTELOPE VALLEY AIR QUALITY MANAGEMENT DISTRICT  
LANCASTER, CALIFORNIA**

*AGENDA ITEM 4*

**DATE:** October 18, 2011

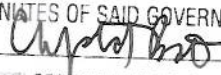
**RECOMMENDATION:** Conduct a continued public hearing to consider the amendment of Rule 315 – *Federal Clean Air Act Section 185 Penalty*: a. Open public hearing; b. Receive staff report; c. Receive public testimony; d. Close public hearing; e. Make a determination that the CEQA Categorical Exemption applies; f. Waive reading of Resolution; g. Adopt Resolution making appropriate findings, certifying the Notice of Exemption, amending Rule 315 and directing staff actions.

**SUMMARY:** Rule 315 is proposed for amendment to implement the requirements of Section 185 of the Federal Clean Air Act, and to stop potential sanctions being imposed by the United States Environmental Protection Agency (USEPA) as identified in 75 FR 232, January 5, 2010, through the adoption of a non-attainment area fee equivalency strategy.

**BACKGROUND:** The Antelope Valley Air Quality Management District (AVAQMD) originally adopted Rule 315 – *Federal Clean Air Act Section 185 Penalty* on February 15, 2011. The AVAQMD submitted Rule 315 to the California Air Resources Board (CARB) on March 3, 2011 requesting inclusion in the State Implementation Plan (SIP), and CARB submitted Rule 315 to the USEPA on April 22, 2011 as a revision to the State Implementation Plan (SIP). USEPA made a finding of completeness on May 19, 2011, which reset the sanction clock, but not the Federal Implementation Plan (FIP) clock. The AVAQMD is now amending Rule 315 to include additional provisions at the request of USEPA to make the rule approvable and eliminate the possibility of sanctions as well as a FIP. A public hearing to consider the proposed amendment of Rule 315 was noticed for September 20, 2011. This hearing was continued to the October 18, 2011 Governing Board Meeting to address substantive comments from CARB and USEPA.

Rule 315 was adopted to implement a mandatory penalty pursuant to Section 185 of the Federal Clean Air Act (42 U.S.C. §7511d) within the AVAQMD portion of the Southeast Desert Modified Air Quality Maintenance Area (AQMA). 42 U.S.C. 7511d (Federal Clean Air Act Section 185, or Section 185) requires the imposition of a penalty of \$5,000 per ton (adjusted for inflation) on major facilities within ozone non-attainment areas that fail to meet the severe or extreme ozone attainment date unless such major facilities have

Cc: Tracy Walters

I, CRYSTAL BATES, DEPUTY CLERK OF THE GOVERNING BOARD  
OF THE ANTELOPE VALLEY AIR QUALITY MANAGEMENT  
DISTRICT, HEREBY CERTIFY THE FOREGOING TO BE A  
FULL, TRUE AND CORRECT COPY OF THE RECORD OF  
THE ACTION AS THE SAME APPEARS IN THE OFFICIAL  
MINUTES OF SAID GOVERNING BOARD MEETING  
 DEPUTY CLERK OF THE BOARD  
ANTELOPE VALLEY AIR QUALITY MANAGEMENT DISTRICT

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reduced their ozone precursor emissions by twenty percent (20%) from a baseline amount. The jurisdiction of the AVAQMD is located entirely within the AQMA which failed to meet the one-hour ozone standard on or before 2007. Therefore the AVAQMD is subject to the provisions of Section 185. The USEPA made a finding of a failure to submit a rule implementing the penalty provisions of Section 185 on January 5, 2010 (75 FR 232) which started a SIP 18 month sanction clock. Potential sanctions include an increase in the new source review offset ratio and suspension of federal highway transportation funding. Rule 315 was designed to implement the provisions of Section 185 and to stop the sanction clock upon approval of the submission by USEPA. The submission of Rule 315 was found to be complete by USEPA, which stopped the sanction clock, but not the FIP clock. Under a FIP, USEPA, not the state, determines what steps must be taken to implement Section 185. For the FIP clock to be turned off, USEPA must approve the SIP within 24 months of publishing the finding of the rule as not approvable.

The AVAQMD is now amending Rule 315 to include a non-attainment area fee equivalency strategy, as provided by Section 172(e) of the Federal Clean Air Act. Section 172(e) allows for alternative programs that are no less stringent than the mandated Section 185 program. Under USEPA guidance, such programs may be either "fee equivalent" or "emissions equivalent" or a combination of both strategies. This rule amendment proposes a "fee equivalent" program which will recognize funding from fee programs that are surplus to the SIP and are used for air quality improvement projects in the AVAQMD. USEPA guidance requires fees collected under such program be directed towards the reduction of Oxides of Nitrogen (NO<sub>x</sub>) or Volatile Organic Compounds (VOC) emissions. Such funds will be accumulated into a fee equivalency "tracking account" and used to offset the burden otherwise required under the Section 185 penalty collection approach. This "fee equivalency" approach must be used to facilitate pollution reduction efforts, whereas the Federal Clean Air Act does not specify how Section 185 penalty revenues are to be used. Therefore, this "fee equivalent" strategy will have a greater potential for an air quality benefit than the Section 185 penalty.

A Notice of Exemption, Categorical Exemption (Class 8; 14 Cal. Code Reg. §15308) will be prepared by the AVAQMD for the amendment of Rule 315 pursuant to the requirements of CEQA.

**REASON FOR RECOMMENDATION:** Health & Safety Code §§40702 and 40703 require the Governing Board to hold a public hearing before adopting rules and regulations. Also, 42 U.S.C. §7410(l) (FCAA §110(l)) requires that all SIP revisions be adopted after public notice and hearing.

**REVIEW BY OTHERS:** This item was reviewed as to legal form by Karen Nowak, District Counsel and by Eldon Heaston, Executive Director on or before October 3, 2011.



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**FINANCIAL DATA:** No increase in appropriation is anticipated.

**PRESENTER:** Bret Banks, Operations Manager

**ACTION OF THE GOVERNING BOARD  
APPROVED**

Upon Motion by LAWSON, Seconded by LEDFORD, as approved by the following vote:

**Ayes:           6           CRIST, HAWKINS, MCCOY, LEDFORD, DISPENZA, LAWSON**

**Noes:**

**Absent:       1           MANN**

**Abstain:**

**Vacant:**

**CRYSTAL GOREE, DEPUTY CLERK OF THE GOVERNING BOARD**

**BY** *Crystal Goree*

**Dated: October 18, 2011**

**Ref: Resolution 11-15 titled "A RESOLUTION OF THE GOVERNING BOARD OF THE ANTELOPE VALLEY AIR QUALITY MANAGEMENT DISTRICT MAKING FINDINGS, CERTIFYING THE NOTICE OF EXEMPTION, AMENDING RULE 315 – FEDERAL CLEAN AIR ACT SECTION 185 PENALTY AND DIRECTING STAFF ACTIONS."**

## RESOLUTION #11-15

**A RESOLUTION OF THE GOVERNING BOARD OF THE ANTELOPE VALLEY AIR QUALITY MANAGEMENT DISTRICT MAKING FINDINGS, CERTIFYING THE NOTICE OF EXEMPTION, AMENDING RULE 315 – FEDERAL CLEAN AIR ACT SECTION 185 PENALTY AND DIRECTING STAFF ACTIONS.**

On October 18, 2011, on motion by Member LAWSON, seconded by Member LEDFORD, and carried, the following resolution is adopted:

**WHEREAS**, the Antelope Valley Air Quality Management District (AVAQMD) has authority pursuant to California Health and Safety Code (H&S Code) §§40702, 40725-40728 to adopt, amend or repeal rules and regulations; and

**WHEREAS**, the proposed amendments will implement the requirements of Section 185 of the Federal Clean Air Act to stop potential sanctions being imposed by the USEPA as identified in 75 FR 232, January 5, 2010, through the adoption of a non-attainment area fee equivalency strategy; and

**WHEREAS**, potential sanctions include an increase in the new source review offset ratio and suspension of federal highway transportation funding; and

**WHEREAS**, the AVAQMD originally adopted Rule 315 – *Federal Clean Air Act Section 185 Penalty* on February 15, 2011; and

**WHEREAS**, the AVAQMD submitted Rule 315 to the California Air Resources Board (CARB) on March 3, 2011 requesting inclusion in the State Implementation Plan (SIP), and CARB submitted Rule 315 to the United States Environmental Protection Agency (USEPA) on April 22, 2011 as a revision to the SIP; and

**WHEREAS**, USEPA made a finding of completeness on May 19, 2011, which reset the sanction clock, but not the Federal Implementation Plan (FIP) clock; and

**WHEREAS**, under a FIP, USEPA, not the state, determines what steps must be taken to implement Section 185; and

**WHEREAS**, for the FIP clock to be turned off, USEPA must approve the SIP within 24 months of publishing the finding of the rule as not approvable; and

**WHEREAS**, the AVAQMD is now amending Rule 315 to include additional provisions at the request of USEPA to make the rule approvable and eliminate the possibility of sanctions as well as a FIP; and

## RESOLUTION #11-15

1       **WHEREAS**, a public hearing to consider the proposed amendment of Rule 315 was noticed for  
2 September 20, 2011, and this hearing was continued to the October 18, 2011 Governing Board Meeting to  
3 address substantive comments from CARB and USEPA; and

4       **WHEREAS**, Rule 315 was originally adopted to implement a mandatory penalty pursuant to  
5 Section 185 of the Federal Clean Air Act (42 U.S.C. §7511d) within the AVAQMD portion of the  
6 Southeast Desert Modified Air Quality Maintenance Area (AQMA); and

7       **WHEREAS**, 42 U.S.C. 7511d (Federal Clean Air Act Section 185, or Section 185) requires the  
8 imposition of a penalty of \$5,000 per ton (adjusted for inflation) on major facilities within ozone non-  
9 attainment areas that fail to meet the severe or extreme ozone attainment date unless such major facilities  
10 have reduced their ozone precursor emissions by twenty percent (20%) from a baseline amount; and

11       **WHEREAS**, the jurisdiction of the AVAQMD is located entirely within the AQMA which failed  
12 to meet the one-hour ozone standard on or before 2007 making the AVAQMD is subject to the provisions  
13 of Section 185; and

14       **WHEREAS**, the AVAQMD is now amending Rule 315 to include a non-attainment area fee  
15 equivalency strategy, as provided by Section 172(e) of the Federal Clean Air Act, which allows for  
16 alternative programs that are no less stringent than the mandated Section 185 program; and

17       **WHEREAS**, under USEPA guidance, such programs may be either “fee equivalent” or  
18 “emissions equivalent” or a combination of both strategies; and

19       **WHEREAS**, this rule amendment proposes a “fee equivalent” program which will recognize  
20 funding from fee programs that are surplus to the SIP and are used for air quality improvement projects in  
21 the AVAQMD; and

22       **WHEREAS**, USEPA guidance requires fees collected under such program be directed towards  
23 the reduction of Oxides of Nitrogen (NO<sub>x</sub>) or Volatile Organic Compounds (VOC) emissions; and

24       **WHEREAS**, such funds will be accumulated into a fee equivalency “tracking account” and used  
25 to offset the burden otherwise required under the Section 185 penalty collection approach; and

26       **WHEREAS**, this “fee equivalency” approach must be used to facilitate pollution reduction  
27 efforts, whereas the Federal Clean Air Act does not specify how Section 185 penalty revenues are to be  
28 used; and



## RESOLUTION #11-15

1       **WHEREAS**, this “fee equivalent” strategy will have a greater potential for an air quality benefit  
2 than the Section 185 penalty; and

3       **WHEREAS**, the proposed amendments to the rule are necessary to implement the requirements of  
4 Section 185 of the Federal Clean Air Act, and to stop potential sanctions being imposed by the USEPA as  
5 identified in 75 FR 232, January 5, 2010, through the adoption of a non-attainment area fee equivalency  
6 strategy.; and

7       **WHEREAS**, the AVAQMD has the authority pursuant to H&S Code §40702 to amend rules and  
8 regulations; and

9       **WHEREAS**, the proposed amendments are clear in that the meaning can be easily understood by  
10 the persons impacted by the rule; and

11       **WHEREAS**, the proposed amendments are in harmony with, and not in conflict with, or  
12 contradictory to existing statutes, court decisions, or state or federal regulations because Federal Clean Air  
13 Act Section 185 requires the imposition of a penalty of \$5,000 per ton (adjusted for inflation) on major  
14 facilities within ozone non-attainment areas that fail to meet the severe or extreme ozone attainment date  
15 unless such major facilities have reduced their ozone precursor emissions by twenty percent (20%) from a  
16 baseline amount, and the jurisdiction of the AVAQMD is located entirely within the AQMA which failed  
17 to meet the one-hour ozone standard on or before 2007 making the AVAQMD subject to the provisions of  
18 Section 185; and

19       **WHEREAS**, the proposed amendments do not impose the same requirements as any existing  
20 State or federal regulation because the Federal Clean Air Act requires the AVAQMD to adopt a rule to  
21 implement the requirements of Section 185; and

22       **WHEREAS**, the proposed amendments are needed to implement the requirements of Section 185  
23 of the Federal Clean Air Act, and to stop potential sanctions being imposed by the USEPA as identified in  
24 75 FR 232, January 5, 2010, through the adoption of a non-attainment area fee equivalency strategy; and

25       **WHEREAS**, a public hearing has been properly noticed and conducted, pursuant to H&S Code  
26 §40725, concerning the proposed amendments to Rule 315 and

27       **WHEREAS**, a Notice of Exemption, a Categorical Exemption (Class 8, 14 CCR §15308) for the  
28 proposed amendments to Rule 315, completed in compliance with the California Environmental Quality

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Act (CEQA), has been presented to the Governing Board of the AVAQMD; each member having reviewed, considered and approved the information contained therein prior to acting on the proposed amendments to Rule 315, and the Governing Board of the AVAQMD having determined that the proposed amendments will not have any potential for resulting in any adverse impact upon the environment; and

**WHEREAS**, the Governing Board of the AVAQMD has considered the evidence presented at the public hearing; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Governing Board of the AVAQMD finds that the proposed amendments to Rule 315 – Federal Clean Air Act Section 185 Penalty are necessary, authorized, clear, consistent, non-duplicative and properly referenced; and

**BE IT FURTHER RESOLVED**, that the Governing Board of the AVAQMD hereby makes a finding that the Class 8 Categorical Exemption (14 CCR §15308) applies and certifies the Notice of Exemption for the proposed amendments to Rule 315; and

**BE IT FURTHER RESOLVED**, that the Governing Board of the AVAQMD does hereby adopt, pursuant to the authority granted by law, the proposed amendments to Rule 315, as set forth in the attachments to this resolution and incorporated herein by this reference; and

**BE IT FURTHER RESOLVED**, that this resolution shall take effect immediately upon adoption, that the Clerk of the Board is directed to file the Notice of Exemption in compliance with the provisions of CEQA.

**PASSED, APPROVED AND ADOPTED** by the Governing Board of the Antelope Valley Air Quality Management District by the following vote:

AYES: 6                      MEMBER: LAWSON, DISPENZA, CRIST, MCCOY, LEDFORD, HAWKINS

NOES:                      MEMBER:

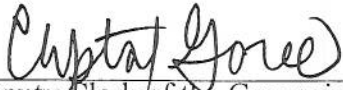
ABSENT: 1                      MEMBER: KEN MANN

ABSTAIN:                      MEMBER:

STATE OF CALIFORNIA	)	
	)	
COUNTY OF LOS ANGELES	)	SS:

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1 I, Crystal Goree, Deputy Clerk of the Governing Board of the Antelope Valley Air Quality  
2 Management District, hereby certify the foregoing to be a full, true and correct copy of the record of the  
3 action as the same appears in the Official Minutes of said Governing Board at its meeting of October 18,  
4 2011.

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6 Deputy Clerk of the Governing Board,  
7 Antelope Valley Air Quality Management District.  
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